

BEFORE THE SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

FRANCES D. SCHRICK, )  
Appellant, ) SHB No. 91-4  
and ) FINDINGS OF FACT,  
ANN AAGAARD, ) CONCLUSIONS OF LAW AND  
Intervenor-Co-Appellant, ) ORDER  
v. )  
CHELAN COUNTY and ALAN E. )  
WALTAR d/b/s INGALLS )  
CREEK ENRICHMENT CENTER, )  
Respondents. )

THIS MATTER, an appeal from Chelan County's issuance of a shoreline substantial development permit for a retreat center on Ingalls Creek, came on for formal hearing before the Shorelines Hearings Board on July 30 and 31, 1991, at Wenatchee, Washington. Board Members present were the Chairman Harold S. Zimmerman, presiding; Judith A. Bendor, Annette S. McGee, Nancy Burnett, Judith B. Barbour and David Wolfenbarger.

Appellant Ann Aagaard, whose motion to intervene as a co-appellant was granted by the Presiding Member on July 25, 1991, represented herself and without opposition, assisted in the representation of appellant Frances D. Schrick, pro se. Mark Peterson, Deputy Prosecuting Attorney, represented respondent Chelan County, and attorney Joseph Jackson

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER  
SHB NO. 91-4

1 represented respondent Alan E. Waltar. The proceedings were  
2 recorded by Cathy S. Shoemaker, SCR, Hewitt & Stevens,  
3 Wenatchee, Washington. The Board viewed the site of  
4 the proposed development and vicinity with the parties on July  
5 30, 1991.

6 Opening statements were made; witnesses were sworn and  
7 testified; exhibits were admitted and examined, and oral final  
8 arguments were heard. The Board has reviewed the record. From  
9 the testimony heard, evidence examined and contentions made, the  
10 Board makes the following:

11 FINDINGS OF FACT

12 I.

13 Respondent Alan E. Waltar is the president of Ingalls Creek  
14 Enrichment Center, a non-profit Washington corporation. On May  
15 22, 1990, he on behalf of Ingalls Creek, filed with Chelan  
16 County an application for a Shoreline Substantial Development  
17 Permit and Shoreline Variance Permit to develop a retreat center  
18 for family recreation and group retreats. The project site is a  
19 3.66 acre parcel of land south of the "Old Blewett Pass Highway"  
20 adjacent to Ingalls Creek. The site is approximately 1,500 feet  
21 west of Peshastin Creek, into which Ingalls Creek flows. The  
22 "New Blewett Pass Highway," SR 97, is immediately to the east of  
23 Peshastin Creek.

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II.

Chelan County determined that the impacts associated with the proposal were not significantly adverse, and issued a declaration of nonsignificance ("DNS"). Notice of application for the shoreline substantial development and variance permits were also duly published. On December 10, 1990, the Chelan County Board of Adjustment held a public hearing on the permit applications and thereafter granted the shoreline substantial development permit with conditions. It denied the shoreline variance (a four foot variance from the 25 foot building height standard) as not meeting the variance criteria set forth in Section 29.22 of the Chelan County Shoreline Master Program and Washington Administrative Code (WAC) 173-14-150. The applicant did not appeal the variance denial to this Board.

III.

The conditions attached to the Shoreline Substantial Development Permit are:

1. Development proceed in conformance with plans on file with the Chelan County Planning Department (ZC 465).
2. The existing Crystal Waters subdivision water system be completed per Washington State Department of Health requirements and approved by the Chelan-Douglas Health District.
3. The applicant shall prepare and submit a fire prevention plan to the Chelan County Fire Marshal for approval and schedule a site inspection by the County Fire Marshal and representatives of the local fire district. Roofs shall be of non-combustible materials.

4. Adhere to the requirements of the Chelan-Douglas Health District in regard to on-site sewage disposal systems and water system requirements as outlined in a memo to the Chelan County Planning Department dated August 16, 1990.
5. All parking areas shall be graveled and located a minimum of 100 feet back from the ordinary high water mark of Ingalls Creek.
6. The applicant shall submit a revised site plan to the Planning Department showing the approved locations of the drainfield areas and reserve drainfield areas, the locations of the two proposed campsites, parking areas with all structures maintaining minimum setbacks.
7. The access road shall be hard surfaced to a minimum width of 22 feet (rural land standard).
8. Prior to the issuance of a building permit for the chalet structure, the applicant shall either hard surface a 22 foot access road and install landscaping or submit a financial surety in an amount deemed appropriate to ensure its compliance.
9. Appropriate easement width for the access road as determined by the applicant, Planning Department and the County Engineer shall be provided.

#### IV.

As approved by Chelan County, the proposed development would include a chalet-style building for overnight lodging with a kitchen, meeting areas, twelve bedrooms and bathrooms, and a one-bedroom apartment. There would be a a multipurpose building with a kitchen, equipment storage, and a two-bedroom apartment, and separate shower and toilet facilities for up to thirty

1 campers, two campsites, trails, a picnic gazebo, and a graveled  
2 parking lot for twenty-four cars.

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4 V.

5 The chalet is to be set back twenty feet from the Ordinary  
6 High Water Mark (OHWM) of Ingalls Creek, and the parking lot is  
7 to be set back one hundred feet from the OHWM. A portion of the  
8 multi-purpose building is within two hundred feet of the OHWM.

9 A maximum of one hundred people (fifty in the chalet, fifty  
10 using the campsites and multipurpose building) are likely to be  
11 on the site at any one time. Such peak usage of the retreat  
12 center is expected to occur normally on weekends.

13 VI.

14 In 1983, the Waltars applied to the Washington State  
15 Department of Ecology for a water right certificate for water to  
16 serve the property. In 1989 DOE granted a certificate of water  
17 right for 5.6 acre feet per year for continuous domestic  
18 supply. The water will be obtained offsite from a nearby spring  
19 location in the Crystal Waters Plat.

20 The Waltars had purchased a total of 46.86 acres of land at  
21 the confluence of Ingalls and Peshastin Creeks in 1981 for the  
22 primary purpose of building a retreat center with fifty cabins.  
23 In order to generate cash for this purpose, they subdivided  
24 approximately 26 acres of the 46.86 acre parcel into 46 lots. A  
25 Planned Unit Development (PUD) was approved for a three-phase  
26 residential development for the entire 46.86 acres. So far,

1 only the first phase of this PUD is proceeding along the  
2 development track: a seven-lot subdivision, the Plat of Crystal  
3 Waters, was filed with the County in 1986. A homeowners'  
4 association with Waltar as president has been formed.

5 Access to the retreat center will be provided via a private  
6 easement through abutting property owned by Mr. Waltar and his  
7 wife. A septic system consisting of tanks and associated  
8 drainfields will provide for sewage disposal on site. No  
9 permanent structures have been built as yet.

#### 10 VII

11 The spring located in this plat has been developed for water  
12 supply, but has not yet been completed to County satisfaction.

#### 13 VIII

14 The Crystal Waters Subdivision is not within the shoreline,  
15 but portions of Phases II and III of the planned unit  
16 development are. Before the Waltars can proceed with Phase II,  
17 the County requires the water system to be improved with the  
18 addition of a 40,000 gallon reservoir. Because of monetary  
19 constraints, the Waltars have no imminent plans to continue with  
20 development of the phased residential development.

21 In order to proceed with the retreat center alone, Waltar  
22 shortplatted the 3.66 acre site for it as one lot, Chelan County  
23 Short Plat No. 1890.

IX.

The proposed retreat center is in an area designated by the Chelan County Shoreline Master Program (CCSMP) as Conservancy Environment. The Shoreline Substantial Development Permit issued by the County identified Ingalls Creek as a shoreline of state-wide significance. The Board, however, takes notice that WAC 173-16-080, which designates the streams and rivers constituting shorelines of the state in Chelan County, lists Ingalls Creek as a shoreline, rather than a shoreline of statewide significance. See WAC 173-18-040(4)(a).

The retreat center, classified under the underlying zoning as Planned Development-mixed use, was treated by the County as a commercial use under the CCSMP. The proposal contains elements of residential, lodging and non-intensive recreational use.

X.

Appellants are property owners in the vicinity of the proposed project. Generally, their concerns expressed at the hearing relate to adequacy of the public notice provided, adequacy of environmental analysis and conditioning, the retreat center's potential impacts on Ingalls and Peshastin Creeks, aesthetics, adequacy of the proposed water and sewer systems, piecemeal development, whether or not the project is water-related and compatible with the conservancy environment.

We address the issues of fact upon which evidence was presented. Appellants have the burden of proof.

1  
2 XI.

3 Public Notice: Respondents presented testimony that the  
4 required notice of application for a Substantial Development  
5 Permit had been given and produced evidence of proper  
6 publication. Appellants presented no evidence in rebuttal to  
7 support their claim that notice was inadequate: they have  
8 failed to meet their burden of proof on this issue.

9 XII.

10 Public Health: The Chelan-Douglas Health District approved  
11 issuance of the Shoreline Substantial Development Permit because  
12 it appeared likely that a sewage disposal system could be  
13 installed that would meet County health requirements. The  
14 drainfield meets the required setbacks and is of  
15 sufficient size. Additional test holes for soil type will be  
16 required before Health Department permits will issue Operation  
17 and Maintenance Agreements. Annual permit and inspection will  
18 be required. The applicants' expert witness and consulting  
19 engineer installed additional test holes and found mostly Type  
20 III and some Type I soils in the drainfields. Type I soil is  
21 gravelly sandy soil through which effluent has the tendency to  
22 move too rapidly. The expert recommended a septic system which  
23 met state standards for enhanced effluent treatment. The  
24 recommended system includes installation of an intermittent sand  
25 filter between the septic tanks and the pressure system which  
26 spreads the effluent evenly on the drainfield.



1           We find that if the permittee provides the recommended  
2 system as approved by the County Health Department, adequately  
3 maintains the system and abides by the County's requirements,  
4 the proposed septic system is not likely to cause significant  
5 adverse public health impacts on water quality from  
6 contamination, provided that non-phosphate detergents and  
7 cleansers are used on-site. See Conclusion of Law III, below..  
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9                           XIII.

10       **Adequacy of Water Supply:** Appellants were apparently of the  
11 impression that the retreat center proposed to withdraw water  
12 from Ingalls Creek for its domestic water supply. Such is not  
13 the case. The domestic water supply is to be solely provided by  
14 the Crystal Waters Spring, although fire protection may be  
15 provided from the Creek. We find no adverse impact on water  
16 quality from the proposed project's water supply system.

17                           XIV.

18       **Aesthetics:** No private views are affected by the proposal.  
19 Because the height variance was denied, the chalet structure  
20 will have a maximum height of twenty-five feet as permitted by  
21 the CCSMP. The chalet will be partially visible from the Old  
22 Blewett Pass Highway, more so in winter when deciduous trees are  
23 bare.

24           We find that the development is sufficiently unobtrusive to  
25 have no significant adverse effect upon scenic views.  
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XV.

It has not been established that there would be more than a moderate impact on the environment from constructing or operating the retreat center project, provided that runoff from the access road and parking area does not reach Ingalls Creek. Such negative environmental effects as there may be from construction and operation of this development, would be substantially mitigated by the conditions imposed by the County on the permit, with the additional conditions listed at Conclusion III, below.

XVI.

Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such. From these Findings of Fact, the Board makes the following:

CONCLUSIONS OF LAW

I.

We review substantial development permits for consistency with the Shoreline Management Act (SMA) and the applicable shoreline master program. RCW 90.58.140(2)(b).

We also review the consistency of the shoreline permit action with the State Environmental Policy Act (SEPA), WAC 461-08-175(1)(a).

Appellants bear the burden of proof. RCW 90.56.140(7).

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II.

The issues in this case are those set forth in the Pre-Hearing Order of June 3, 1991. Issues 6, 7, and 11 not having been addressed by the parties, are accordingly deemed abandoned.

III.

Based on Finding XIII above, the County's issuance of a final declaration of non-significance was justified. We conclude, however, that additional conditions should be imposed to mitigate potential adverse impacts on water quality: (1) the use of non-phosphate detergents should be required in kitchen and laundry facilities on the site; and (2) the access road and parking lot should be designed and constructed to dispose of water runoff so it will not flow into Ingalls Creek. Such design is to be submitted to the County for approval.

IV.

The CCSMP defines "Conservancy Environment" as

An area characterized by a potential for diffuse outdoor recreation activities, timber harvesting on a sustained yield basis, passive agricultural uses such as pasture and range lands, and other related development. CCSMP §7.2.280.5.

Commercial development in the Conservancy Environment is prohibited except for those defined as water dependent or water related uses, which are permitted subject to certain requirements for maximum heights and inconspicuousness of

1 structures, minimum setbacks, landscaping and pedestrian access  
2 to the shoreline where practical. CCSMP §17.3.

3 The CCSMP at §7.2.800.2 defines water related uses, in  
4 pertinent part, as:

5 Those uses which do not depend upon a  
6 waterfront location to continue their  
7 operation but whose operation may be  
8 facilitated or enhanced by a shoreline  
9 location, such as:

- 10 . . . .  
11 c. Motels,  
12 d. Hotels,  
13 e. Resorts,  
14 . . . .

15 which, by their design and aesthetic  
16 appearance, facilitate use and enjoyment of a  
17 shoreline location.

18 V.

19 Appellants challenge the "water-relatedness" of the project  
20 because, in their view, the project's economics do not require  
21 that the chalet be located in the shoreline. They base this  
22 argument, in part, on the CCSMP Commercial Development Policy  
23 (CCSMP §6.a.) which provides:

24 Commercial developments which provide an  
25 opportunity for substantial numbers of people to  
26 enjoy the amenities of the shoreline should be  
27 encouraged to locate near the water. All other  
commercial developments should be encouraged to  
locate upland.

28 We cannot say that this policy is violated by the retreat  
29 center's location twenty feet from the OHWM, given the

1 circumstances of this application for a retreat center designed  
2 to attract groups to enjoy the aesthetics of the Ingalls Creek  
3 shoreline on a relatively small parcel of land. More  
4 importantly, the County's definition of water-related uses at  
5 CCSMP §7.2.800.2 does not require a showing of economic  
6 necessity for a shoreline location.

7 We conclude that the proposed project falls within the CCSMP  
8 definition of water-related uses.

9 At the hearing, appellants also challenged the CCSMP  
10 definition of water-related uses as not in accordance with the  
11 policies set forth in RCW 90.58.020. Because this issue was not  
12 set forth in the Pre-Hearing Order, nor was any motion made to  
13 amend the Order's statement of legal issues to add a challenge  
14 to the conformance of the CCSMP with the SMA, we decline to  
15 address the issue.

#### 16 VI.

17 We conclude that the proposed retreat center is compatible  
18 with the environmental classification of the area, and meets the  
19 performance standards set forth in the CCSMP for water-related  
20 commercial developments in the Conservancy Environment.

#### 21 VII.

22 We found, and now conclude that Ingalls Creek is not a  
23 shoreline of state-wide significance (See Finding in Fact VII  
24 above). We therefore do not analyze whether the proposed  
25 retreat center comports with the hierarchy of use  
26

1 preferences for such shorelines contemplated by RCW 90.58.020.

2 Any shoreline development must, however, be consistent with  
3 the SMA policies for the shorelines of the state. A major  
4 objective of the Shoreline Act is "to prevent the inherent harm  
5 in an uncoordinated and piecemeal development of the state's  
6 shorelines." RCW 90.58.020. We conclude that the procedures  
7 followed by the County in dealing with the proposed retreat  
8 center, in light of the development already permitted (but not  
9 completed) for the rest of the Waltars' property, do not  
10 constitute the kind of fragmented decision-making that creates  
11 the "nibbling effect" of uncoordinated development without  
12 regard to cumulative effects on the shoreline. Further, the  
13 conditions imposed on the permit insuree that the use is  
14 consistent with the control of pollution and prevention of  
15 damage to the natural environment.

16 From these Conclusions of Law, the Board enters this:

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ORDER

The substantial development permit issued by Chelan County to Alan E. Waltar for the retreat center on Ingalls Creek is AFFIRMED with the conditions set forth in Conclusion III, above.

DATED this 9th day of October, 1991.

SHORELINE HEARINGS BOARD

  
HAROLD S. ZIMMERMAN, Presiding

  
JUDITH A. BENDOR, Member

  
ANNETTE S. MCGEE, Member

  
NANCY BURNETT, Member

  
DAVE WOLFENBARGER, Member

  
JUDITH B. BARBOUR, Member

SCHRICK

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FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER  
SHB NO. 91-4